

# HELM

FINANCIAL CORPORATION

One Embarcadero Center • San Francisco, CA 94111

415/398-4510

FAX 415/398-4816

April 13, 1999

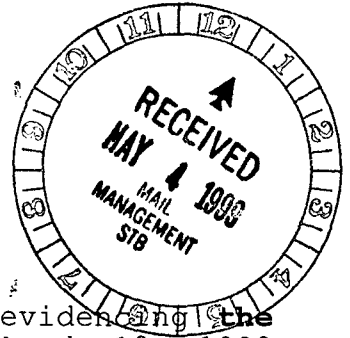
Mr. Vernon Williams  
Secretary  
Surface Transportation Board  
1925 K Street, N.W.  
Washington, D.C. 20423-0001

RECORDATION NO. 11633-E

FILED TS

MAY 4 '99

12-30PM



Dear Mr. Williams:

Enclosed are two (2) Certification of True Copy evidence and the **Assignment and Assumption Agreement** dated as of March 19, 1999 between the following parties:

"Assignor": Provident Bank  
One East Fourth St., 215A  
Cincinnati, Ohio 45202

"Assignee": Helm Financial Corporation  
One Embarcadero Center, Suite 3700  
San Francisco, CA 94111

Equipment: Ninety (90) railcars as more fully described in Appendix 2 attached hereto.

Please file this Agreement as a supplementary document to Recordation No. 11633 filed on April 8, 1980 and return one (1) stamped copy to my attention. A check covering the filing fee of twenty-six dollars (\$26.00) is enclosed.

Sincerely,

*Alison Drain*  
Alison Drain  
Document Administrator

/ad  
Enclosures (2)

CERTIFICATION OF TRUE COPY

On April 13, 1999, I, Sharon Van Fossan, have examined the original copy of the Assignment and Assumption Agreement dated as of March 19, 1999 between The Provident Bank and Helm Financial Corporation, and I hereby certify that I have compared the attached duplicate copy with the original and that it is a complete, true and correct copy of the original in all respects, including the dates, signatures and acknowledgments thereof.



Sharon Van Fossan  
Supervisor Contract Administration

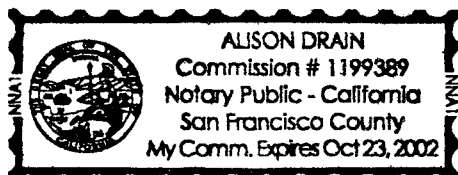
STATE OF CALIFORNIA                    )  
                                                  ) S.S.  
COUNTY OF SAN FRANCISCO        )

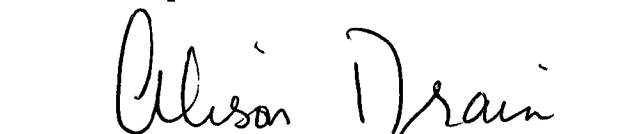
On April 13<sup>th</sup>, 1999, before me, Alison Drain, personally appeared Sharon Van Fossan, Supervisor Contract Administration of **HELM FINANCIAL CORPORATION**,

X personally known to me -OR-

— proved to me on the basis of satisfactory evidence to be the person(s) whose name(s) is/are subscribed to the within instrument and acknowledged to me that he/she/they executed the same in his/her/their authorized capacity(ies), and that by his/her/their signature(s) on the instrument the person(s), or the entity upon behalf of which the person(s) acted, executed the instrument.

Witness my hand and official seal.



  
SIGNATURE OF THE NOTARY

**EXHIBIT D**

RECORDATION NO. **11633-E**

FILED

To  
Purchase and Sale Agreement

MAY 4 '99

12-30PM

**ASSIGNMENT AND ASSUMPTION AGREEMENT**

THIS ASSIGNMENT AND ASSUMPTION AGREEMENT dated as of March 19, 1999, is between THE PROVIDENT BANK ("Assignor"), an Ohio banking corporation, and HELM FINANCIAL CORPORATION ("Assignee"), a California corporation.

**RECITALS**

WHEREAS, Assignor and Assignee have entered into a Purchase and Sale Agreement dated as of March 19, 1999 (the "Purchase Agreement"), pursuant to which Assignor shall see, assign, transfer and convey to Assignee, and Assignor shall purchase, receive and accept, all of Assignor's right, title and interest in and to the units of railroad rolling stock described in Appendix 2 hereto (collectively, the "Cars") including (without limitation), all Insurance Interests (as defined in the Purchase Agreement, as defined below) and all warranty claims with respect thereto; and

WHEREAS, Assignor desires to transfer to Assignee all of its right, title and interest in and to (a) the Lease of Railroad Equipment dated as of February 15, 1980 (the "Provident Lease"), between Seller and D&H Corporation, a Delaware corporation (and a wholly-owned subsidiary of Canadian Pacific Railway Company), as successor in interest thereunder to Delaware and Hudson Railway Company ("Lessee"), (b) First Amendment to the Provident Lease dated March 1, 1984 ("Amendment 1"), and (c) Amendment No. 2 to the Provident Lease dated November 23, 1998, between Seller and Lessee ("Amendment 2"); and, together with the Provident Lease, Amendment 1 and any and all other amendments or modifications to the Provident Lease, hereinafter, collectively the "Existing Lease", and all other operative documents described in Appendix 1 hereto (collectively referred to as the "Operative Documents" and, together with the Cars, collectively referred to as the "Owner Interest").

NOW, THEREFORE, in consideration of the mutual covenants contained herein and for other good and valuable consideration the receipt and sufficiency of which are thereby acknowledged, the parties agree as follows:

Section 1. Defined Terms. Capitalized terms not otherwise defined herein shall have the meaning ascribed to them in the Purchase Agreement or the Existing Lease, as the case may be.

Section 2. Assignment of Owner Interests. Assignor hereby sells, assigns, transfers and conveys to Assignee, as of the date hereof, free and clear of all liens, claims and encumbrances other than the claims, liens and encumbrances created by Assignee and any Liens created or permitted by or under the Existing Lease, and those claims, liens and encumbrances which Lessee has the

obligation to pay or discharge pursuant to the Existing Lease, all of its right, title and interest in, to and under the Owner Interests; and Assignee hereby accepts and receives all such right, title and interest in, to and under the Owner Interests, excluding any claim, cause of action, liability or obligation of any nature of description or other right to payment accruing, arising or relating to any period on or prior to the date hereof and payable by reason of any act, event or omission occurring or existing on or prior to the date hereof, whether known or unknown, contingent or otherwise, as of the date hereof to have and to hold the same unto Assignee, its successors and assigns, forever.

Section 3. Assumption of Liabilities. Upon the execution and delivery of this Agreement, Assignee shall be deemed to be the "Lessor" for all purposes of the Existing Lease. Assignee assumes, with respect to the periods after the date hereof, all of the duties and obligations of Assignor hereafter accruing or arising incident to the Owner Interests. Assignee confirms, with respect to the periods after the date hereof, that as of the date hereof it shall be deemed a party to the Owner Interests hereto to which Assignor is a party, and Assignee agrees to be bound by all the terms of, and to undertake all such obligations of, Assignor contained therein arising after the date hereof.

Section 4. Distribution of Funds Received and Car-Related Expenses Incurred Pursuant to the Existing Lease. All rentals and all other fees and expenses earned as "Lessor" under the Existing Lease with respect to the Cars (collectively, "Lease Revenues") payable on or prior to the Closing Date shall be for Assignor's sole account. All Lease Revenues earned as Lessor payable after the Closing Date shall be for Assignee's sole account. Assignor shall pay to Assignee (promptly upon Assignor's receipt thereof) all Lease Revenues collected by Assignor, if any, that are attributable to the period after the Closing Date. Assignee shall pay to Assignor (promptly upon Assignee's receipt thereof) any Lease Revenues that may be paid to Assignee after the Closing, but which are attributable to the period on or prior to the Closing. Assignor shall assume any expenses incurred with respect to the Cars on or prior to the Closing. Assignee shall assume any expenses incurred with respect to the Cars after the Closing. In the event either party receives an invoice for expenses that are due the other party, such invoice shall be immediately forwarded to the proper party for payment.

Section 5. Notices. Any notices provided for in the Existing Lease from and after the date hereof shall be delivered to Assignee at the following address or such other place as Assignee may designate in accordance with the Existing Lease:

Helm Financial Corporation  
One Embarcadero Center, Suite 3700  
San Francisco, California 94111  
Attn: David R. Eckles

Section 6. Headings. The headings of the Sections herein are for convenience of reference only and shall not define or limit any of the terms or provisions hereof.

Section 7. Governing Law. THIS AGREEMENT SHALL BE DEEMED TO HAVE BEEN MADE IN THE STATE OF OHIO, SHALL BE CONSTRUED IN ACCORDANCE WITH, AND THE RIGHTS AND LIABILITIES OF THE PARTIES HEREUNDER SHALL BE GOVERNED BY, THE LAWS OF SUCH STATE, WITHOUT REGARD TO ITS CONFLICTS OF LAW DOCTRINE, AND THIS AGREEMENT SHALL BE DEEMED IN ALL RESPECTS TO BE A CONTRACT OF SUCH STATE. BOTH PARTIES CONSENT TO THE JURISDICTION OF THE STATE AND FEDERAL COURTS SITTING IN SAN FRANCISCO COUNTY, CALIFORNIA AND HAMILTON COUNTY, OHIO, FOR ANY ACTION THAT MAY BE BROUGHT UNDER THIS AGREEMENT OR THE TRANSACTIONS CONTEMPLATED THEREBY; PROVIDED, HOWEVER, THAT EITHER PARTY MAY BRING ANY SUCH ACTION IN ANY OTHER FORUM HAVING JURISDICTION OVER THE MATTER.

Section 8. Execution in Counterparts. This Agreement and any amendments, waivers or consents hereto may be executed by Assignor and Assignee in separate counterparts (or upon separate signature pages bound together into one or more counterparts), each of which, when so executed and delivered, shall be an original, but all such counterparts shall together constitute one and the same instrument.

Section 9. Purchase Agreement. The rights and obligations of the parties hereto are subject to the terms and conditions of the Purchase Agreement.

Section 10. Recordation. Assignor hereby authorizes the recordation of this Agreement and hereby agrees to execute such further documentation as Assignee may reasonably request in order to carry out the purposes of this Agreement.

Section 11. Miscellaneous. Each party to this Agreement shall execute and deliver such instruments, documents and other written information and take such other actions as the other party may reasonably require in order to carry out the intent of this Agreement. This Agreement and all provisions hereof shall be binding upon and inure to the benefit of the parties hereto and their respective successors and assigns. This Agreement may be executed in one or more counterparts, all of which taken together shall constitute one instrument.

*Remainder of page intentionally left blank. Signature page follows.*

IN WITNESS WHEREOF, the parties hereto have executed and delivered this Assignment and Assumption Agreement as of the day and year first herein above set forth.

THE PROVIDENT BANK

By: [Signature]  
Name: Forest C. Frank  
Its: Senior Vice President

HELM FINANCIAL CORPORATION

By: [Signature]  
Name: DAVID R. ECKLES  
Its: EXECUTIVE VICE PRESIDENT

STATE OF OHIO                    )  
                                          ) SS:  
COUNTY OF HAMILTON        )

On this 17<sup>th</sup> day of March, 1999, before me personally appeared Forest C. Frank, to me personally known, who, being by me duly sworn, says that he is Senior Vice President of THE PROVIDENT BANK, that this instrument was signed on behalf of said corporation by authority of its Board of Directors. Further, he acknowledged that the execution of the foregoing instrument was the free act and deed of said corporation.

[Signature]  
Notary Public  
**JOY E. HERALD**  
Notary Public, State of Ohio  
My Commission Expires Oct. 2, 2001

[Notary Seal]

My commission expires: \_\_\_\_\_

STATE OF CALIFORNIA            )  
                                                  )  
COUNTY OF SAN FRANCISCO    )

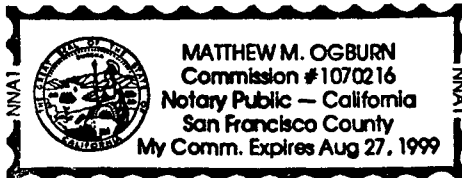
SS:

On this 18<sup>th</sup> day of March, 1999, before me personally appeared David R. Eckles to me personally known, who, being by me duly sworn, says that (s)he is Executive V.P. of HELM FINANCIAL CORPORATION, that this instrument was signed on behalf of said corporation by authority of its Board of Directors, and (s)he acknowledged that the execution of the foregoing instrument was the free act and deed of said corporation.

Matthew M. Ogburn  
Notary Public

[Notary Seal]

My commission expires: 8/27/99



**APPENDIX 1**  
To  
Assignment and Assumption Agreement

**OPERATIVE DOCUMENTS**

Except as set forth herein, all right, title and interest of THE PROVIDENT BANK ("Assignor") in, to and under the following Operative Documents:

1. Lease of Railroad Equipment dated as of February 15, 1980 (the "Existing Lease"), by and between Seller, as lessor, and D&H Corporation, a Delaware corporation (a wholly-owned subsidiary of Canadian Pacific Railway Company), as successor in interest thereunder to Delaware and Hudson Railway Company, as lessee ("Lessee").
2. Certificates of Acceptance executed by Delaware and Hudson Railway Company with respect to the delivery of the Cars under the Existing Lease.
3. First Amendment to the Existing Lease dated March 1, 1984 ("Amendment 1").
4. Amendment No. 2 to the Existing Lease dated November 23, 1998 ("Amendment 2").
5. Termination of Trust dated March 19, 1999 (the "Termination of Trust"), between Seller, as owner, and First Security Bank, N.A. (successor to First Security State Bank), as owner trustee (the "Owner Trustee"), together with the following transfer documents dated as of the same date pertaining to the trust estate: (a) Bill of Sale executed by the Owner Trustee in favor of Seller, with respect to the Cars; and (b) Assignment and Assumption Agreement between Seller and Owner Trustee, with respect to the Existing Lease.